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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:
Thomas E. Coverstone

Serial No.: 10/020,094

Filed: **December 13, 2001**

For: **SYSTEM AND METHOD FOR WIRELESS
TELECOMMUNICATIONS NETWORK**

§ Group Art Unit: **2617**
§
§
§ Examiner: **Bryan J. Fox**
§
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§ Atty. Dkt. No.: **02820.0003.NPUS00**
§
§
§ Confirmation No.: **9964**
§
§

**RE-SUBMISSION OF REPLY BRIEF IN RESPONSE TO
EXAMINER'S JULY 9, 2007 SUPPLEMENTAL ANSWER**

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant filed a Reply Brief and Request for Oral Hearing on July 3, 2007 in response to the Examiner's Answer mailed May 3, 2007. The Examiner subsequently filed a Supplemental Answer on July 9, 2007 containing no apparent substantive changes to the original May 3 Answer – the only apparent minor change is the additional listing of the Marlevi reference under “(8) Evidence Relied Upon” on page 2. Because no substantive changes were made in the Examiner's Supplemental Answer, Applicant re-

submits herewith three copies of the Reply Brief and Request for Oral Hearing that was originally filed on July 3, 2007.

No fees are believed to be due in connection with the filing of this document. However, the Commissioner is hereby authorized to deduct any fees that may be due in connection with the filing of this document from Deposit Account No. 08-3038/02820.0003.NPUS00.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jeffrey J. Phillips', with a large, stylized flourish at the end.

Jeffrey J. Phillips
Reg. No. 51,125

Date: September 5, 2007



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| NUMBER | EV-00172505US | EXPRESS MAIL MAILING LABEL |
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REPLY BRIEF

MAIL STOP APPEAL BRIEF - PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Applicant submits an original and two copies of this Reply Brief in response to the Examiner's Answer mailed May 3, 2007. No fees are believed to be due in connection with the filing of this document other than those authorized in the enclosed Request for Oral Hearing. However, the Commissioner is hereby authorized to deduct any fees that may be due in connection with the filing of this document from Deposit Account No. 08-3038/02820.0003.NPUS00.

I. STATUS OF THE CLAIMS

As of the final rejection and advisory action, claims 10-47 are pending in the application. Claims 1-9 were cancelled in the Response to Office Action dated July 1, 2005 that was submitted on November 1, 2005. Claims 12-47 were submitted as new claims in the Response to Office Action dated July 1, 2005. All of the claims were rejected in the Final Office Action dated March 10, 2006 and in the Advisory Action dated May 31, 2006.

Therefore, claims 10-47 are on appeal. These claims are subject to a final rejection based on 35 U.S.C. § 102(b).

II. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

The ground of rejection is whether claims 10-47 are anticipated under 35 U.S.C. § 102(b) by United States Patent Number 5,999,126 (*Ito*).

III. ARGUMENT

This Reply Brief is filed in response to the Examiner's Answer dated May 3, 2007. The Examiner's rejections on pages 3-13 are an exact copy of the Final Office Action dated March 10, 2006. Thus, pages 3-13 of the Examiner's Answer have already been addressed in Appellant's original Appeal Brief. This Reply Brief specifically addresses the Responses to Argument on pages 14-18 of the Examiner's Answer.

Claim 10

Claim 10 requires a transmitter for transmitting targeted broadcasts based on trends in position location data. *Ito* discloses a unit located on an automobile that is capable of receiving a mass service signal transmitted from a PHS base station. *Ito* does not disclose transmitting a broadcast to a specified audience (i.e. a targeted broadcast), but rather discloses sending a mass signal that is received by everybody in a transmission range that has a special receiving unit. Sending a signal that is received only within a given range is the definition of a broadcast, not a targeted broadcast. The Examiner has clearly taken the broadest reasonable interpretation standard too far by defining "targeted broadcast" as "broadcast." In the proper application of the "broadest reasonable interpretation" rule, each and every word in a claim is still significant in determining the meaning of a claim limitation. *Innova/Pure Water v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1119 (Fed. Cir. 2004) (holding that defendant's claim construction impermissibly read-out the term "operatively" out of the phrase "operatively connected").

Furthermore, the Examiner has ignored claim 10's requirement that the targeted broadcast be made based on the calculated trends in position location data. Instead, the Examiner argues that the extrapolation of data points and subsequent identification of a current location is equivalent to "a trend in position location data." This overly broad construction is inconsistent with the specification, which clearly sets forth examples of trends in position location data such as "frequent or frequented routes" [¶ 29], or that a current location is proximate to a geographical point of interest such as a store or restaurant [¶ 30]. In any event, the Examiner's own argument underscores the fact that that the mass broadcast of *Ito* is not made to a targeted audience for a specific purpose,

but rather is sent to anybody within range having a receiver for receiving a general service signal that can contain numerous and varied pieces of information. *See Ito*, Fig. 12 algorithm (sequentially looking for traffic information, then weather, then news, then event information, then routing information). *Ito* fails to disclose and the Examiner fails to argue any nexus between the calculated trends in location data and the targeted broadcast—the targeted broadcast necessarily requiring specific subject matter to a specific interest group. A mass service signal broadcast from a transmitter to an unspecified audience does not anticipate the targeted broadcasts of the present invention, where the purpose of the broadcast is to inform a selected audience about proximity to certain geographical points of interest based on trends in location data. Accordingly, the Examiner’s reliance on *Ito* fails to disclose several limitations of claim 10, thus precluding a finding of anticipation under 35 U.S.C. § 102(b).

Claims 14 and 18

As discussed with respect to claim 10, claims 14 and 18 require storing position location data, processing the location data, and sending a targeted broadcast based on the processed location data [claim 14] or the current location [claim 18]. As discussed above, *Ito* fails to disclose transmitting a targeted broadcast to a specific audience, instead broadcasting a mass radio signal. There is clearly no nexus between the processed location data and the targeted broadcast as required by claims 14 and 18.

Furthermore, claims 14 and 18 require transmitting a **targeted advertisement broadcast** based on the process location data. *Ito* fails to disclose, and the Examiner fails to address, targeted advertisement broadcasts, thus precluding a finding of anticipation under 35 U.S.C. § 102(b).

Claim 11

The Examiner has concluded on page 15 of his Answer that because he cannot find an explicit definition for “transaction trend” in the specification, that the broadest reasonable interpretation rule entitles him to define “transaction data” to be identical in scope to “location data.” Thus, the Examiner’s rejection of claim 11 is factually identical to that of claim 10, discussed above, and fails for the same reasons. Not only does the

Examiner assert that GPS location identification is a trend in position location data (see response above to claim 10), but that it is also somehow a trend in transaction data. This construction for “transaction data” finds no support in the specification, which clearly describes examples of transaction data such as usage transactions [¶ 29], responses to broadcasts [¶ 29], requests for information [¶ 29], and past purchases [¶ 31]. These are transactions between the user and the system, not computer interactions within the system itself.

As noted in Appellant’s Appeal Brief at page 10, Federal Circuit case law is clear that the words in the claims themselves are highly relevant to claim construction. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1314 (Fed. Cir. 2005). Applicant specifically used “trends in position location data” and “trends in the transaction data” to denote different scope as evidenced by the use of different language. Thus, the Examiner’s equation of the two limitations in different claims is error. Furthermore, Federal Circuit case law is clear that the specification is highly relevant in determining the meaning of claim terms such as “transaction data.” *Id.* at 1315. The specification provides a clear basis for what is meant by “transaction data,” and the Examiner agreed by not rejecting the term as indefinite. Specific examples given in the specification include usage transactions [¶ 29], responses to broadcasts [¶ 29], requests for information [¶ 29], and past purchases [¶ 31]. *Ito* discloses neither “a memory device for storing transaction data” nor “a processor for determining trends in the transaction data” as required by claim 11, thus precluding a finding of anticipation under 35 U.S.C. § 102(b).

Despite the Examiner’s failure to properly construe claim 11, the Examiner has also ignored, similarly to claim 10, that a targeted broadcast be made **based on the calculated transaction trends**. Instead, the Examiner’s argument relies solely with the mass broadcast from a PHS radio transmitter to an unspecified audience. The Examiner fails to argue any nexus between the calculated transaction trend and the targeted broadcast as required by claim 11, thus precluding a finding of anticipation under 35 U.S.C. § 102(b).

Claims 22 and 35

The Examiner's continued reliance on *Ito* as disclosing a "transmitter for transmitting a targeted broadcast" must fail for the reasons discussed above.

Furthermore, the Examiner fails to point to any disclosure in *Ito* satisfying the limitation of claims 22 and 35 requiring "a processor for **selecting a targeted broadcast audience.**" Instead, the Examiner argues that the mass radio transmission relating to traffic information will be heard by an intended audience. This is result-oriented logic that fails to meet anticipate the affirmative limitation of "selecting a target audience." It is undisputed that *Ito* discloses neither a processor for selecting a targeted broadcast audience nor a transmitter for transmitting a targeted broadcast to the targeted broadcast audience. *Ito* merely discloses a mass PHS service signal, received by everybody within the transmission range having a receiving unit. There is no selection of a selected broadcast audience or targeted broadcast to a specified audience, thereby further precluding a finding of anticipation of claims 22 and 35 under 35 U.S.C. § 102.

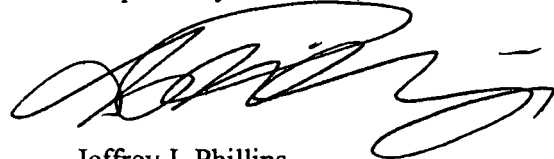
IV. CONCLUSION

In view of the record, the Applicant submits that independent claims 10, 11, 14, 18, 22, and 35 and dependent claims therefrom are allowable under 35 U.S.C. § 102. Further, the Examiner's rejection of dependent claims 25 and 38 are moot in light of the patentability of independent claims 22 and 35, respectively. Applicant requests that the Board remand the application to the Examiner with instructions to withdraw the rejections and to advance the application to allowance.

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